IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 108 of 1997
With
INCOME TAX REFERENCE No. 109 of 1997
With
INCOME TAX REFERENCE No. 110 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KINNARY FAMILY TRUST - Applicant(s)
Versus
COMMISSIONER OF INCOME-TAX - Respondent(s)

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Appearance :
MR R.K. Kothari for the Applicant(s) : 1,
MR MANISH R BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr. R.K. Kothari, learned counsel for the assessee. Mrs. Bhatt, learned counsel for the Revenue. The parties are heard.

2. The Income Tax Appellate Tribunal, Ahmedabad 'A' has referred the following question to this Court for its opinion arising out of Income Tax Appeal No. 1444 & 1445/Ahd/92 relating to assessment years 1985-86 and 1986-87;

> 'Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in law in holding that the assessee trust was a discretionary family trust liable to be taxed at maximum marginal rate ?'

3. In Income Tax Reference No. 109 of 1997,the Income Tax Appellate Tribunal, Ahmedabad 'A' has referred the abovesaid question to this Court for its opinion arising out of Income Tax Appeal No. 1442 & 1443/Ahd/92 relating to assessment years 1985-86 and 1986-87.

4. In Income Tax Reference No. 110 of 1997,the Income Tax Appellate Tribunal, Ahmedabad 'A' has referred the abovesaid question to this Court for its opinion arising out of Income Tax Appeal No. 1440 & 1441/Ahd/92 relating to assessment years 1985-86 and 1986-87.

5. Learned counsel for the parties submit that the present Tax References would be squarely covered by our order dated 13.7.2006 passed in Income Tax Reference No. 149 of 1995 in the matter of Sanjiv Family Trust Vs. C.I.T. The parties submit that the orders passed by the Tribunal may be set aside and the matters may be remanded back to the Tribunal with a direction that the Tribunal shall decide the matters afresh in accordance with law. The orders of the Tribunal are accordingly set aside with direction that the Tribunal would be entitled to reconsider the entire matter and redetermine the liability of the assessee, i.e., the beneficiary of the first level Trust. It would be open to the Tribunal to reconsider the matter and decide the matter in accordance with law after taking into consideration the judgments in the matter of McDowell & Co.Ltd. v.C.T.O., 154 ITR 148; Union of India v. Azadi Bachao Andolan, 263 ITR 706; 263 ITR 706; 209 ITR 101; and 231 ITR 540. As we are remanding the matters back to the Tribunal, we refuse to make any observation on the merits of the matters as the same is likely to affect the rights of the either party. All the References stand accordingly disposed of. No costs.

[R.S. Garg, J.]

rmr. [M.R. Shah, J.]